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July 17, 1997

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
Room 814  
1919 M Street, N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: IB Docket No. 96-220

No. of Copies rec'd. CH  
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Dear Chairman Hundt:

Leo One USA Corporation ("Leo One USA") by this letter responds to the June 18, 1997 letter to you submitted by Orbital Communications Corporation ("Orbcomm") and the June 23, 1997 letter submitted by Orbcomm and several other applicants regarding the pending Little LEO rulemaking proceeding. At the outset, we would like to once again thank you and the staff for the tremendous effort that has been made in this proceeding. As we stated at our meeting of June 13, 1997, Leo One USA fully supports the recommendations of the International Bureau as articulated by Ruth Milkman. These recommendations will best serve the public interest by encouraging the development of competition across the full range of Little LEO services and will result in the fastest path to licensing additional competitive systems.

As you know, during the last nine months the parties to this proceeding have provided the Commission with voluminous comments and reply comments, as well as numerous additional written submissions. The record in this proceeding is replete with detailed policy, economic and technical analyses of the issues under consideration. We believe that the staff has done a tremendous job in synthesizing the record and in developing proposals that will serve the public interest.

A close examination of Orbcomm's June 18, 1997 letter leaves little doubt that its goal in this proceeding is to handicap any potential competitors and to place itself in a preeminent competitive position. For instance, in the June 18 letter, Orbcomm states that it will "offer services to time-sensitive markets." However, Orbcomm fails to state that the X/Y/Z plan, unlike the band plan articulated by the Commission staff, will preclude any new entrant from serving those markets and will thus deprive the public the opportunity to purchase services from multiple Little LEO operators. This conclusion is fully supported by the record in this proceeding. Moreover, Orbcomm's argument that it will face competition from foreign Little LEOs or other technologies

rings hollow. Orbcomm is well aware of the fact that most of the proposed foreign Little LEO systems are merely paper systems and that *none* of those systems is capable of serving time-sensitive markets. The Big LEO service cannot offer Little LEO type services in an economically competitive manner and terrestrial service providers cannot provide ubiquitous coverage that includes both urban and rural areas. Leo One USA's analysis in its comments of Little LEO markets using the Department of Justice Merger Guidelines indicates that Orbcomm is the only existing licensee that will be able to serve time-sensitive markets requiring ubiquitous or global coverage. Thus, adoption of the X/Y/Z plan will put Orbcomm indefinitely in a monopoly position in time-sensitive markets.

Orbcomm's stated needs for more spectrum lends further credence to its anti-competitive motives. Orbcomm claims that grant of its request for twelve more satellites and additional spectrum is necessary to enhance coverage in Northern Canada and Alaska. It is hard to believe that Orbcomm's projected revenue from this additional capacity can justify the significant cost associated with the construction, launch and operation of twelve additional satellites in light of the fact that today Orbcomm apparently can only internally justify a commitment to implement a 28 satellite system, eight satellites less than in its authorization. The Offering Memorandum of Orbcomm Global, L.P. and Orbcomm Global Capital Corp. indicates that the Orbcomm system will consist of only 28 satellites, not the 36 satellites specified in Orbcomm's license. (See Offering Memorandum of Orbcomm Global, L.P. and Orbcomm Global Capital Corp., Bear, Stearns & Co., Inc. et al. Aug. 2, 1996 at 1.) Thus, Orbcomm is committed to implementing only 28 satellites, not the 36 satellites specified in its license or the 48 satellites requested in its second round modification request. This fact alone raises serious questions regarding Orbcomm's true motives in this proceeding.<sup>1</sup>

If the Commission chooses to defer or eliminate the pending modification requests of the existing licensees, four new applicants will remain.<sup>2</sup> Of these four applicants, three (Leo One USA, CTA and E-SAT) support the A/B plan proposed by Leo One USA which would have accommodated all pending new applicants. Only Final Analysis opposes the A/B plan. As was the case in the PCS proceeding, the band plan the Commission selects here will establish the economic structure for the Little LEO industry. Like Orbcomm, Leo One USA has articulated a requirement to serve time-sensitive markets. The X/Y/Z plan will not allow Leo One USA to meet this requirement. In contrast, the A/B plan will allow Leo One USA to meet its requirements and at the same time allow all the pending applicants to meet their original business plans. Thus, adoption of

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<sup>1</sup> Orbcomm states that it will prevail in the Court of Appeals in any challenge of a Commission order eliminating the existing licensees. As discussed in detail in Leo One USA's comments in this proceeding, the Commission has ample discretion to determine the eligibility of existing licensees. Moreover, the record in the proceeding supports the Bureau's proposal on existing licensee eligibility.

<sup>2</sup> There may be only three new applicants because Final Analysis may be deemed an affiliate of VITA. Final Analysis' relationship with VITA may explain why it continues to vigorously advocate the interests of the existing licensees. It also should be noted that according to recent press reports, Orbital Sciences, Orbcomm's parent, recently bought CTA's space business which may further reduce the number of applicants.

the X/Y/Z plan will not serve the public's interest in being able to purchase time-sensitive Little LEO services from multiple suppliers.

The June 18 and 23rd letters argue that the Commission should not be captive to Leo One USA's business plan and further notes that the Orbcomm system is "operating on approximately one third of the spectrum" sought under the original Orbcomm business plan. Orbcomm's ability to creatively produce facts further demonstrates its anti-competitive interests. Specifically, contrary to the assertions made in the June 23, 1997 letter, Orbcomm *has not reduced* its spectrum requirements *but in fact, increased* those requirements. The Orbcomm February 28, 1990 application requests a total of 908 kHz of spectrum. On October 27, 1994, the FCC authorized Orbcomm to operate in a total of 1225 kHz of spectrum. Grant of its two pending modification requests would further increase Orbcomm's spectrum to 1255 kHz. This is approximately 23% more spectrum than sought in the original Orbcomm application. Orbcomm's statements that it is operating on approximately one-third of the frequency it originally sought is simply not true. Moreover, as the Commission is aware Orbcomm increased its system capabilities when it increased its system from 20 to 36 satellites.

On the other hand, under the Bureau's proposal, if Leo One USA was licensed to operate System A it would have to operate a system with capacity smaller than it proposed in its application. Moreover, significant technical burdens would be imposed by time sharing with DOD.

Regardless of Orbcomm's rhetoric, the Commission is not captive to Leo One USA's business plan. The real question posed by Orbcomm is whether the existing licensees' requests should be accommodated or should new systems be licensed that are able to provide competition to Orbcomm in serving these time-sensitive markets. Leo One USA believes that there is an overwhelming case that the public will be better served by the introduction of new systems that can compete with Orbcomm in the time-sensitive markets.

Leo One USA takes strong exception to the statement that it has refused to engage in joint discussions with other applicants. This is not true. Leo One USA participated in extensive discussions earlier this year with all the other applicants. Moreover, as was amply demonstrated at the February 21, 1997 FCC status conference, Leo One USA was never asked to participate in the development of the X/Y/Z plan.<sup>3</sup>

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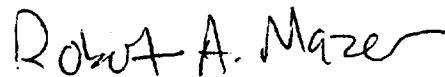
<sup>3</sup> Leo One USA participated in good faith in extensive discussions with other second round applicants during January 1997, as well as with all the applicants during various meetings in February and March of 1997. As the Commission is well aware, Leo One USA committed substantial technical resources to evaluate the various proposals made by some of the other applicants, including a technical analysis as to how all the other new applicants' systems could be successfully accommodated under the A/B plan. It should be noted that all of the various versions of the X/Y plan were completely devoid of any technical analysis.

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The June 23rd letter proposed that the Commission adopt the X/Y/Z plan because of the issues surrounding the MobileMedia case. Leo One USA is at a loss to understand the relationship between the Little LEO band plan and the determination of any applicants' qualifications. Moreover, the Petition submitted to the Commission on July 1, 1997 by Leo One USA and David Bayer provides the basis for an expeditious resolution of the MobileMedia case as it relates to the Little LEO proceeding. As the Petition demonstrates, there is no evidence whatsoever suggesting David Bayer is not qualified to hold an FCC license.<sup>4</sup> Leo One USA urges the Commission to proceed with the adoption of a band plan based on what policy will best serve the public interest not idle speculation or innuendo regarding an applicant's qualifications.

For all these reasons, Leo One USA urges the Commission to reject Orbcomm's self-serving arguments and adopt the Bureau's proposal.

Respectfully submitted,



Robert A. Mazer/*As*  
Albert Shuldiner  
Counsel to Leo One USA Corporation

cc: Commissioner Quello  
Commissioner Ness  
Commissioner Chong  
Parties of Record

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Orbcomm, in its attempt to further raise questions regarding David Bayer's qualifications to hold an FCC license, contends that "the Commission previously issued \$505,000 in forfeitures against Mr. Bayer." See Orbcomm June 18, 1997 letter at n. 11. Consistent with Orbcomm's behavior in this proceeding they once again completely misrepresented the facts. The Commission has *never* issued a forfeiture against Mr. Bayer. The \$505,000 forfeiture in question was assessed against Cybertel Corporation. In the decision imposing the forfeiture, the Commission specifically found that "Cybertel's owners and senior managers were not involved in the misconduct and did not know of its occurrence until after Columbia's petition was filed." See *David A. Bayer*, 7 FCC Rcd 5054, 5056 (1992).

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing letter addressed to Chairman Reed E. Hundt was sent by first-class mail, postage prepaid, this 17th day of July, 1997, to each of the following:

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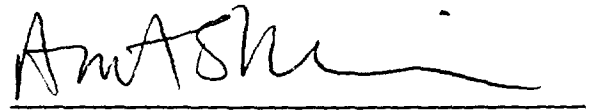
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A handwritten signature in black ink, appearing to read "AmAshu", is written over a solid horizontal line.